IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07/02/2004

Coram

The Honourable Mr.Justice A.S.VENKATACHALAMOORTHY
and
The Honourable Mr.Justice C.NAGAPPAN

W.P.No.20769 of 1999

1. The Director General,
E.S.I.Corporation,
Kotla Road,
New Delhi.

2. Chairman,
Standing Committee,
E.S.I.Corporation,
New Delhi.

3. Regional Director,
E.S.I., Corporation,
143, Sterling Road,
Chennai 34. ... Petitioners

-Vs-

1. Mohammed Asmathullah

2. The Registrar,
Central Administrative Tribunal,
Chennai. ... Respondents

This writ petition is filed under Article 226 of Constitution of
India, praying this Court to issue a writ of Certiorari, as stated therein.

For Petitioners : Mr.G.Desappan

For 1st Respondent : Mr.R.Ganesan

:O R D E R

A.S.VENKATACHALAMOORTHY, J.
The order passed by the Central Administrative Tribunal,
Madras Bench in O.A.984 of 1997 is under challenge in this writ petition.
2. The first respondent herein joined as Lower Division Clerk
in Employees State Insurance Corporation in the year 1959 and ultimately
retired on 28.2.1994 as Manager Grade II. Before his retirement, that was on

4.10.1993, he was issued with a charge memo, which reads as under,
"That Sri.Md.Azmatulla, while functioning as Insurance Inspector, Kodambakkam Inspection Division, Madras, went to conduct Regular Inspection of the records of Sri Swastic Enterprises, 29/1, Easwaran Koil Street, West Mambalam, Madras -600 033 with code No: 51-36334-57 on 2 5 -10-89.
That Sri Md.Azmatulla then failed to report the existence and continuity in coverage of M/s Sri Swastic Enterprises and its change of name as S.V.M.Enterprises, after proper enquiry but merely reported that whereabouts of the partners could not be ascertained and no inspection could be done.
That Sri Md.Azmatulla, failed to report on the applicability of the Employees' State Insurance Act, 1948 to M/s S.V.M.Enterprises, Code No: 51-36334-57 consequent on its change from M/s Sri Swastick Enterprises, the contribution due etc, but merely reported its noncoverage even after seeing the Attendance Register, Wage Register Petty Cash Book cum Ledger.
That Sri Md.Azmatulla acted in a manner stated above, with the ulterior motive of giving pecuniary benefits to the employer thereby causing loss of revenue to the Corpn.
By his above act, Sri Md.Azmatulla, the then Insurance Inspector had failed to maintain absolute integrity, and devotion to duty and exhibited conduct unbecoming of a Corpn., employee, thereby violating Rule 3 of the C.C.S.(Conduct) Rules, 1964 read with Regulation 23 of ESI Corporation (Staff and Conditions of Service) Regulations, 1959."

3. The first respondent filed explanation denying the charges levelled against him. The Disciplinary Proceeding instituted against the first respondent ultimately resulted in the award of punishment by the Director General, Employees State Insurance Corporation. The punishment awarded was 10% cut of pension with a proportionate cut in dearness allowance for a period of three years. The first respondent filed an appeal to the Chairman, Standing Committee against the order of the Director General. However, the said appeal was dismissed by an order dated 28.6.1997. Being aggrieved by the said order, the first respondent preferred the above writ petition.
4. Being aggrieved by the said order, the first respondent filed O.A.984 of 1997 before the Central Administrative Tribunal, Madras Bench. The Tribunal allowed the said application holding that there was arbitrary and incomplete delegation of powers to the Director General, which is bad in law and that the Director General ought not to have passed the order by himself and should have only forwarded his report to the Standing Committee and which in turn should have exercised its powers after due consultation with the Union Public service Commission. Questioning the correctness of the said order, the Director General of E.S.I.Corporation has preferred the above writ petition.
5. We have heard the arguments advanced by the learned counsel for the petitioners as well as the first respondent.
6. Admittedly the first respondent was issued with the charge memo on 4.10.1993 and on the date of his retirement, i.e., on 28.2.19 94, the Disciplinary Proceedings were pending and the said proceedings concluded only on 17.4.1995. The question for consideration is whether the petitioners have followed the proper procedure. Or in other words, the question is whether the

Director General is competent to impose punishment having found that the first respondent was guilty of certain charges.

7. Section 17 of the Employees State Insurance Act, 1948 (hereinafter referred to as 'Act') empowers the Corporation to employ staffs and servants as may be necessary for the efficient transaction of its business and the method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay, provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government. Section 97 deals with the power of the Corporation to make regulations and as per sub-clause 2(xxi), the method of recruitment, pay and allowances, discipline, superannuation benefits and other conditions of service of the officers and servants of the Corporation other than the Director General and Financial Commissioner.

8. Hence, except to the extent that the Corporation has made a departure from the rules applicable to the Officers and Employees of the Central Government, the Rules prescribed for the Central Government Officers and employees would apply.

9. The Central Civil Services (Pension) Rules, 1972, which came in to force on 1st June, 1972, govern the payment of pension to the Civilian Government Servants. Rule 9 confers right on the President to withhold or withdraw pension. It is necessary to extract Rule 9(1) and 9(2), which read as under,

Rule 9 - Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government Servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.
(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-
(i) shall not be instituted save with the sanction of the President,
(ii) shall not be in respect of any event which took place more than four years before such institution, and
(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

10. Admittedly these rules are applicable to the Officers and employees of the ESI Corporation. Or in other words, the said Act or the Rules framed thereunder do not indicate anything that Rule 9 of the CCS (Pension) Rules would not apply. This is also evident from the Regulation in ESIC (Staff and conditions of Service regulation, 1959). Regulation 8 specifically says that all the employees of the Corporation other than the principal officers would be entitled for the benefit of pension on the same scale and subject to the same terms and conditions as laid down in the Pension rules of the Central Government i.e, CCA (Pension) Rules, 1972.
11. Rule 9(1) of the Central Civil Service Rules, 1972, confers power on the President to withhold a pension either in full or in part or withdraw a pension in full or in part whether permanently or for a specified time and also to order recovery of a pension. The President, however, shall consult the Union Public Service Commission before passing final orders.
Rule 9(2) deals with two types of cases. Rule 9(2)(a) deals with a case, where the departmental enquiry was initiated even before retirement, but concluded after retirement. Rule 9(2)(b) deals with the case, where institution of proceedings is after retirement.
But under whatever category a case may fall under, the President, before passing final orders, has to consult the Union Public Service Commission. Or in other words, we do not agree with the contention of the learned counsel for the petitioner that in a case, which would fall under Rule 9(2)(a), consultation with Union Public Service Commission before passing final orders is not necessary.
12. The next regulation that has to be referred to is, regulation 24A, which is to the effect that the Standing Committee shall be competent authority to exercise all the powers and functions which are vested in the President/Local Government/Ministries or Departments of the Government of India, under various Central Government Rules.
Section 94A of the Act lays down that the Standing Committee may direct that all or any of the powers and functions which may be exercised or performed by the Corporation or the Standing Committee, as the case may be, may, in relation to such matters and subject to such conditions, if any, as may be specified, be also exercisable by any officer or authority subordinate to the Corporation.
By virtue of the said section the Standing Committee of the

ESI had resolved in its resolution dated 24.2.1979 as follows,
"In exercise of the powers conferred by Sec.94-A of the ESI Act, the Standing Committee hereby resolve that the powers of the President under Rule 9 of the CCS (Pension) Rules 1972 of the Central Government, which vest in the Standing Committee by virtue of Regulation 24-A of ESIC (Staff and Conditions of Service) Regulations, 1959 be also exercisable by Director General of the ESI Corporation subject to report to the Standing Committee."

13. A combined reading of the above provisions of the Act as well as the regulations would clearly show that the Standing Committee is competent to exercise all the powers of the President. Further, it could be seen that the Director General of E.S.I. Corporation has been nominated as proper disciplinary authority to exercise all powers of the Standing Committee in respect of powers of the President under Rule 9 of Central Civil Service Rules, 1972. But however, the Director General is not required to pass any order by himself and he has to only forward his report recording his findings to the Standing Committee. Thereafter, the Standing Committee should have exercised its powers after due consultation with the Union Public Service Commission and pass appropriate orders under its name and signature. Grave procedural irregularities had crept in in this case, in the sense, the correct procedure as indicated above had not been followed in this case. The Tribunal is well in order in allowing the original application filed by the first respondent.

14. Before winding up, we refer to the ruling cited by the learned counsel for the petitioners reported in AIR 1970 SC 158 (Ram Gopal Chaturvedi v. State of Madhya Pradesh) to substantiate his stand that the consultation with Union Public Service Commission is not necessary. We may straight away say that the said ruling would not apply to the facts of the present case. In that case, a temporary Civil Judge in Madhya Pradesh was terminated and as per the conditions of appointment, he could be terminated on one month notice under rule 12 of M.P.Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960. There was no provision in the order of appointment or in any agreement that he could not be so terminated. An argument was advanced to the effect that the order was invalid as it was passed without consulting the State Public Service Commission under Article 320(3)(c) of the Constitution of India. The Supreme Court in that case ruled that the absence of consultation with the State Public Service Commission did not afford him a cause of action. Hence that ruling may not be of any help to the writ petitioners.

15. In the light of above discussion, this Court holds that the petitioners have not made out a case and consequently the writ petition has to be dismissed.

16. In the result, the writ petition is dismissed. No costs.

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To

The Registrar, Central Administrative Tribunal, Chennai.